

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

:
Plaintiff, : Case No. 3:03cr157
vs. : and 3:08cv133
MICHAEL D. HORTON, : JUDGE WALTER HERBERT RICE
: Defendant.

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #123) IN THEIR
ENTIRETY; DEFENDANT'S OBJECTIONS TO SAID JUDICIAL FILING
(DOC. #124) OVERRULED; JUDGMENT TO ENTER IN FAVOR OF
GOVERNMENT AND AGAINST DEFENDANT HEREIN OVERRULING
DEFENDANT'S MOTION TO VACATE OR SET ASIDE THE JUDGMENT,
PURSUANT TO FED. R. CIV. P. 60(b)(5) AND (6); ANTICIPATED
REQUEST FOR CERTIFICATE OF APPEALABILITY AND MOTION FOR
LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations, filed May 12, 2011 (Doc. #123), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety. The Defendant's Objections to said judicial filing (Doc. #124) are overruled.

As requested by the Defendant in his *pro se* Petition to present supplemental authority (Doc. #125), this Court has reviewed the case of *Lafferty v. District of*

Columbia, 277 F.2d 348 (D.C. Cir. 1960), and finds same to be inapposite as controlling authority. In *Lafferty*, based upon the specific and somewhat unique facts therein, the Court permitted petitioner to challenge a decree adjudging that he was of unsound mind, in the face of the challenge that laches on his part should prevent his doing so.

Pursuant to the above, this Court overrules the Defendant's Motion to Vacate or set aside judgment previously rendered in this case, pursuant to Fed. R. Civ. P. 60(b)(5) and (6) (Doc. #122).

Given that jurists of reason would not disagree with this Court's opinion rendered herein and, further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies both the Defendant a certificate of appealability and any anticipated motion for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 20, 2011



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Michael D. Horton, *Pro Se*
Counsel of record